



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WALL FINANCIAL CORPORATION PROPERTY MANAGEMENT DIVISION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes mndc, ff

Introduction

The tenant applies for a monetary order of \$24,000.00, due to the effects of repeated water leaks at the rented premises.

Issue(s) to be Decided

Is the tenant entitled to a monetary order from the landlord?

Background and Evidence

This tenancy began June, 2004, and ended August 28, 2013. Monthly rent when the tenancy began was \$1,550.00, and \$1,621.00 at the time it ended.

The tenant submits the premises deteriorated progressively over the course of her tenancy. Her letters of complaint to the landlord, specifically dealing with water leak related issues indicate that:

1. On June 8, 2010, she reported that had been experiencing repeated issues with a leaky roof and rain damage inside the apartment, since 2007. The unit was eventually repaired with plaster and paint in April, 2010.
2. On October 4, 2010, she reported that the bathroom ceiling had been leaking through the fan/ventilation or through the heating lamp whenever there was a heavy downpour. She also reported the skylight area leaked, that there had been water marks on a storage box, and that she had cleaned up some mold from under a table in the area below the skylight.
3. On October 31, 2011, she reported water spilling from an electrical switch following a rainfall, late in 2010. The wall was stained. Cracks in the wall that had previous been repaired where again cracking. The tenant confirmed that repairs seemed to have prevented any further water leaks.
4. On May 20, 2013, she reported another huge leak in the hallway ceiling as of April 19, 2013. She had tried to catch water with a receptacle, to prevent ingress of dirty water into her unit. She referenced several areas where she had experienced ongoing water leak issues: the main bathroom area; the master bedroom ceiling, the hallway near the laundry machine closet; an area outside the pantry closet, close to the skylights; and in the dining area close to the French window.

5. On June 19, 2013, she requested an answer to the questions: "What's going on inside the roof?" and "What is growing in the roof, i.e. mold?" She confirmed that roofers had come between rains;
6. On July 28, 2013, she reported that no action had been taken over the past 60 days in reply to her June 19, 2013 letter. She expressed concern about the health conditions in her unit. She reported that the hallway smelled dank, musty and stinky, as was her apartment. She could not get rid of the smell.

The tenant testified she had been bothered by the repeated water leaks in her unit, growing stains on the ceiling, numerous attempts at roof repairs, patches made over patches, no proper investigation to see if there was any mold damage due to the water leaks, despite reported evidence of mold on the carpet. She alleged because the premises were not appealing or hygienic she could not have visitors. She developed some respiratory problems that disappeared after she moved out of the premises.

The landlord's representative submitted that roofers were called immediately whenever there was report of a water leak. Every complaint was address as diligently as possible. The landlord provided records of numerous roof repairs commencing in 2012, and continuing until June, 2013.

Analysis

Section 32(1) of the Act requires a landlord to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

As a general rule, the party claiming damages (in this case the tenant) against the other party bears the onus of proof to establish the other party violated the Act, regulations or tenancy agreement, resulting in the claimed losses. The party claiming the damages must show they did whatever was reasonable to minimize the damage or loss.

In terms of the issue of health, as the tenant correctly notes, mold can be a serious health concern. The presence of uncontrolled moisture or condensation can lead to the formation of mold, and when found, the problem should be rectified immediately. In this case, the tenant complained about finding some mold under a table, but there is no evidence that there was mold discovered in the walls or ceilings. The tenant has not proven as required, on a balance of probabilities, that the premises had a problem with mold. I have not been provided with an inspection report for example, that indicates mold was discovered in the premises. The photographs provided by the tenant do not clearly reveal mold – the areas in question may well be dirt, stains, mildew, or some other reason for discoloration. There is similarly no evidence of the landlord having covered up an indication of a mold problem. The tenant alleges a cough that left once she moved away from the premises. While is possible that this was attributable to allergens or other toxic elements in the premises attributable to the water leaks that occurred, in the absence of any confirming medical support, it has not bee proven that the cough was probability caused by conditions in the rented premises. Accordingly, it

is not established that the landlord is liable to the tenant for a problem with mold in the premises, or for any other health issues.

It is also possible to frame the tenant's claim as being for a breach of the covenant of quiet enjoyment, in which case the tenant must show that there had been a substantial interference with the ordinary and lawful enjoyment of the premises by the landlord's actions that rendered the premises unfit for occupancy for the purposes for which they were leased. Temporary discomfort or inconvenience would not constitute a basis for a breach of the covenant of quiet enjoyment, but in cases of significant disruption, a tenant may be entitled to reimbursement for loss of use of a portion of the property even if the landlord has made every effort to minimize disruption to the tenant in making repairs. In making such a determination, I must take into consideration the seriousness of the situation, and the length of time over which the situation has existed, and the actual steps taken by the landlord to address the concern.

I accept that the landlord took frequent steps to try to rectify the ongoing roof leak problems in 2012 and 2013. The landlord cannot be held responsible for a failure of the contracted roofing company to fully locate or solve the roof problem on any one of the instances of repair. The invoices and repair records do not show that inappropriate repairs were ever made.

The tenant has not demonstrated a level of severity of a loss of enjoyment of the premises to warrant compensation for a loss of quiet enjoyment prior to December, 2012. She has not established for example, that she lost any significant use of the premises prior to that time. However, I accept as proven a more significant interference with the tenant's enjoyment of the premises in the last 9 months of her tenancy. The water stains on the ceilings left the premises looking shabby. There was an offensive musty smell that lingered despite the tenant's efforts to clean. The records show that the moment the tenant moved out, wall repairs and painting was done to repair water leak stain in the premises.

I do not agree with the tenants' characterization that the reduced enjoyment of the premises warrants a rebate of all rent paid during this 9 month period. She remained able to use and enjoy most of the features of her rental unit. She was not prevented from sleeping in her unit, cooking in her unit, or using her washroom. She had use of the common areas and parking area. What she suffered was the discomfort of seeing the water stains, and dealing with the hassle of the repeated water leaks. Valuing this loss is not an exact science, but I have determined that the tenant suffered a 10% loss of enjoyment of the rented premises over the course of the final 9 months of the tenancy. The tenant is entitled to a rebate of rent for this sum, which is $\$162.10 \times 9 = \$1,458.90$. The tenant is also entitled to recover her \$100.00 filing fee from the landlord. The total sum due by the landlord to the tenant is therefore \$1,558.90. The landlord must pay this sum in full to the tenant immediately.

Conclusion

The tenant is awarded \$1,558.90.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: December 16, 2013

Residential Tenancy Branch

